
(2007) 10 GAU CK 0056

In the Gauhati High Court

Case No : I.A. Appeal No's. 16 to 22 of 2003 and CO (FA) No's. 5 to 11 of 2003

Oil and Natural Gas Corporation Ltd.

APPELLANT

Vs

Bithika Bose (Sarkar) and Another

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 30(1)

Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1A), 23(2)

Citation : (2009) 1 GLR 485

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : S. Deb, R. Dasgupta, D.K. Biswas and S. Lodh, for the Appellant;
D.K. Biswas, S. Lodh, D.C. Nath, R. Dasgupta and T.D. Majumdar, for the Respondent

Judgement

B.P. Katakey, J.—These appeals by the requiring Department, namely Oil and Natural Gas Corporation CONGO u/s 54 of the Land Acquisition Act, 1894 ("the Act") as well as the Cross Objections filed by the person interested in compensation payable under the provisions of the Act on account of acquisition of the land, are directed against the common judgment and award dated 10.2.2003 passed by the learned Land Acquisition judge ("LA Judge") in Misc. (LA) Case Nos. 8/2000 to 14.2000, awarding compensation for acquisition of land @ Rs. 8,500 per Kani, i.e., Rs. 21,250 per acre together with solatium @ 30% u/s 23(2) of the Act and further compensation @ 12% per annum on the market value for the period commencing on and from the date of publication of the notification u/s 4(1) of the Act to the date of the award of the Collector or the date of taking over the possession of the land, whichever is earlier, u/s 23(1A) of the Act as well as interest @ 9% per annum from the date of possession till 1(one) year and further interest @15% per annum from the date on which the possession is taken till the date of payment of the enhanced rate of compensation u/s 28 of the Act, with cost of Rs. 300 in each of the cases.

2. The brief facts leading to filing of these appeals and the cross objections may

be noticed as under:

(a) The Collector, on 2.1.1973, issued a preliminary notification u/s 4(1) of the Act which was published in the Tripura Gazette on 6.1.1973, intimating all concerned about the intending acquisition of land measuring, 8 acres for the public purpose, namely for construction of staff quarters of ONGC by registering 16(sixteen) land acquisition cases ("LA cases") in respect of different plots of land. Subsequently, a declaration as required u/s 6 of the Act was also made by the Collector publishing the same in the Tripura Gazette on 12.2.1973. The Collector, in due course of time, passed award u/s 11 of the Act fixing compensation for acquisition of land @ Rs. 3,000 per Kani, i.e., Rs. 7,500 per acre. Since there was dispute between the two brothers, namely Hem Chandra Sarkar and Kali Sankar Sarkar, applications u/s 30 of the Act were filed by them for apportionment of the compensation awarded by the Collector apart from the applications filed u/s 18 of the Act, being not satisfied with the amount awarded as compensation. The dispute relating to the apportionment of compensation was ultimately resolved in terms of the order by the High Court. The Collector thereafter, referred few of the LA cases to the learned LA Judge on the basis of a composite application filed u/s 18 of the Act by Kali Sankar Sarkar, the predecessor-in-interest of the Respondent in the present appeals and the objector in the cross-objections. Similarly, in respect of those LA cases, the Collector made a reference on the basis of the application filed u/s 18 of the Act by the other brother of Kali Sankar Sarkar, namely, Hem Chandra Sarkar. The learned LA Judge thereafter, by a common judgment and award dated 24.3.1993 passed in Ref. Case No. Misc. (LA) 226/92 and Misc. (LA) 227/92 enhanced the compensation payable in respect of the land involved in the said LA cases which were referred u/s 18 of the Act for decision by the court, fixing the market value at Rs. 14,500 per Kani and directing payment of solatium @ 30% on the market value u/s 23(2) of the Act and interest as payable u/s 28 of the Act. The said common judgment and order was challenged by the Collector before this Court in FA Nos. 23/93 and 24/93 and a Division Bench of this Court vide judgment and order dated 7.1.2000 reduced the amount of compensation payable in respect of the land involved in the said LA cases referred for decision of the court by fixing the market value at Rs. 8,000 per Kani with the further direction to pay solatium @ 30% u/s 23(2) and interest as payable u/s 28 of the Act. SLP against the said judgment though filed was rejected by the Apex Court. Since the Collector did not make any reference as required u/s (sic) of the Act in respect of all the LA cases registered on the basis of the same notification issued u/s 4(1) of the Act and the declaration made u/s 6 of the said Act, Smti Bithika Sarkar (legal heir of Kali Sankar Sarkar) filed WP(C) No. 45/2000, seeking a direction to the Collector to refer the remaining LA cases for a decision by the court u/s 18 of the Act, which was disposed of by this Court vide order dated 6.3.2000 directing the Collector to make the reference and accordingly, references were made by the Collector on the basis of which Misc. (LA) Case Nos. 8 to 14 of 2000 (in all, 7 in numbers) were registered by the learned LA Judge, concerning an area of land

measuring 22.86 acres out of the total acquired land of 80 acres.

(b) The Appellant as well as the Respondent/cross objector, on receipt of the notices, filed written statements in the said reference cases pending before the learned LA Judge. Though the Respondent/cross-objector initially in the written statement claimed compensation for the acquired land @ 8% per Kani together with solatium payable u/s 23(2) and interest u/s 23(1A) and also u/s 28 of the Act, yet, the same was enhanced to Rs. 12,500 per Kani by way of amendment, as allowed by the learned LA Judge. The Appellant herein in the written statement as well as the additional written statement has defended the award passed by the Collector. In the counter statement filed by the Collector before the learned LA Judge, the award passed by him has also been defended.

(c) The Respondent/cross objector in support of her claim, examined 1(one) witness, namely Sri Gopi Nath Bhowmick who proved the Exts. 1 to 10. The Collector has also examined Kone) witness, namely Probodh Roychoudhury, a Surveyor of the Land Acquisition Section of the District administration, who has not tendered any document in evidence. The Appellant though filed written statement, did not examine any witnesses nor cross-examine the witnesses in the proceedings. The learned LA Judge upon appreciation of the evidence on record passed the aforesaid common judgment and award against which the present appeals have been preferred by the requiring department, namely, the ONGC. The claimant, i.e., the owner of the land involved in the said appeals also filed cross-objection against the judgment and award passed by the learned LA Judge.

3. All the appeals as well as the cross-objections are taken up together for hearing and disposal, those having arisen out of a common judgment and award passed by the learned LA Judge.

4. I have heard Mr. S. Deb, learned senior Counsel assisted by Mr. R. Dasgupta for the Appellant and Mr. D.K. Biswas, learned Counsel assisted by Mr. S. Lodh for the Respondent in appeals and cross-objector. None appears on behalf of other Respondents.

5. Challenging the judgment and award passed by the learned LA Judge, Mr. Deb, the learned senior Counsel has submitted that this Court vide judgment and order dated 7.1.2000 passed in FA Nos. 23 and 24 of 1993, which arose out of some LA cases registered on the basis of the same notification issued u/s 4(1) of the Act, having awarded compensation @ Rs. 8,000 per Kani in respect of the land contiguous to the land involved in the present appeals, which award has been proved by the Respondent in the appeals as Ext. 2, the learned LA Judge ought not to have fixed the market value of the land involved in these appeals at Rs. 8,500 by ignoring the said judgment of the this Court which attains the finality as the SLP filed by the ONGC was dismissed by the Apex Court. According to Shri Deb, the award passed by this Court in respect of the other land acquisition proceedings arising out of the same notification issued u/s 4(1) of the

Act and between the same party being relevant for the purpose of fixation of market value of the land involved in the subsequent reference cases, the learned LA Judge is to fix the market value at Rs. 8,000 per Kani as awarded by this Court and cannot take into consideration the sale deeds exhibited as Exts. 3 to 10 and that too by averaging the price fetched by such sales. It has been submitted that the learned LA Judge while fixing the market value at Rs. 8,500 on the basis of the sale deeds (Exts. 3 to 10) proved by the Respondent/cross-objector, did not take into consideration the fact that the land acquired by the notification is a vast area and on the other hand, the land involved in these sale instances are very small in area. It has further been submitted that while fixing the market value of the acquired land on the basis of comparable sale instances, appropriate deduction has to be made from the value keeping in view the small portions of the land involved in such sale deeds vis-a-vis the vastness of the acquired land. Therefore, the market value fixed by the learned LA Judge is required to be reduced to Rs. 8,000 per Kani, submitted by the learned senior Counsel. Mr. Deb in support of his contention that the learned LA Judge is to determine the market value only on the basis of the judgment passed by this Court in earlier Reference Cases, has placed reliance on the judgments of the Apex Court in Pal Singh and others Vs. Union Territory of Chandigarh, ; Bhag Singh and others Vs. Union Territory of Chandigarh, ; M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, and Karan Singh and others etc. Vs. Union of India, . In support of the contention relating to the requirement of making deduction from the value of the sale deeds exhibited while fixing market value, keeping in view the vast area of land acquired vis-a-vis the land involved in the comparable sale instances, Mr. Deb has placed reliance on the judgments of the Apex Court in Administrator General of West Bengal Vs. Collector, Varanasi, ; Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, ; P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, ; Viluben Jhalejar Contractor (D) by LR's. Vs. State of Gujarat, ; and ONGC Ltd. v. Sendhabhai Vastaram Patel and Ors. (2005) 6 SCC 454.

6. The further submission of the learned senior Counsel is that the learned LA Judge has committed an error of law in awarding an amount u/s 23(1A) of the Act, the said provision having been inserted in the Act by amending Act 68 of 1984 and came into effect from 24.9.1984, for which the Respondent/cross-objector is not entitled to the said amount awardable u/s 23(1A) of the Act, the proceedings having not been pending on or after 30.4.1982.

7. Mr. Biswas, learned Counsel for the Respondent/cross-objector has, on the other hand, submitted that though the award passed by the court in respect of some reference cases arising out of the same notification issued u/s 4(1) of the Act is a relevant consideration for the purpose of determining the market value of the acquired land involved in the present reference cases, the same cannot be the sole basis for determining the market value, more so when the Exts.6 to 10 proved in the present reference cases and also produced in connection with the

earlier reference cases were not taken into consideration by this Court while passing the judgment and order dated 7.1.2000 on the ground that either the vendor or the vendee of such sale deeds was not examined in the proceedings before the learned LA Judge as required at that point of time, but after the subsequent judgment passed by the Apex Court observing that vendors or the vendees of the sale deeds are not required to be examined to prove the same in a LA proceeding, the sale deeds exhibited in the present LA proceedings are to be taken into consideration for the purpose of determination of market value. It has been contended that there being evidence on record that the land involved in the present reference cases are near the Highway and the land involved in the earlier reference cases is away from that Highway the learned LA Judge has not rightly relied upon the judgment and order passed by this Court in FA Nos. 23 and 24 of 1993 alone, while determining the market value of the land in question. Mr. Biswas however, has contended that the learned LA Judge ought to have determined the market value of the land involved in the reference cases at least at Rs. 12,500 per Kani on the basis of the comparable sale instances, being Ext. 3 to 10 in the present proceedings. Placing reliance on the decision of the Apex Court in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Mr. Biswas has submitted that the deduction, as contended by the learned senior Counsel, cannot be made in the present reference cases as the land acquired has already been developed and it has roads, drainage, electricity and communications in the vicinity. Relating to challenge made by the Appellant to the award passed by the learned LA Judge in respect of awarding an. amount u/s 23(1A) of the Act, Mr. Biswas has conceded that the Respondent/cross-objector is riot entitled to such amount as the said provision came into effect from 24.9.1984 and the LA proceedings were not pending on or after 30.4.1982.

8. Replying to the argument of Mr. Biswas, Mr. Deb, referring to the decision of the Apex Court in Bhagwathula Samanna and Ors. (supra), has submitted that the said decision has been distinguished by the Apex Court in Kasturi and Others Vs. State of Haryana, which was also followed in V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer, Mr. Deb has further submitted that there is absolutely no evidence on record to suggest that the land involved in the present reference cases is superior or at a better position than the land involved in earlier reference cases wherein this Court has passed the judgment and order dated 7.1.2000 in FA Nos. 23 and 24 of 1993.

9. I have considered the submissions of the learned Counsel for both the parties; perused the relevant records including the deposition of the witnesses as well as the documents tendered in evidence before the learned LA Judge.

10. As noticed above, an area of land measuring 80 acres was acquired for a public purpose, namely construction of the staff quarters for the ONGC situated at Mouza - Badarghat, Sheet Nos. 5 and 6 under Sadar Sub-Division (now, Bisalgarh) comprising in various survey plots, by issuing notification u/s 4(1) of

the Act in the Tripura Gazette on 6.1.1973 followed by a declaration dated 20.1.1973 published in the Tripura Gazette on 12.2.1973, belonging to the Respondent in the appeals/cross-objector and others by registering 16 land acquisition cases, in all. Thereafter, the Collector made an award u/s 11 of the Act, fixing the compensation @ Rs. 3,000 per Kani. Having not satisfied with the quantum of compensation fixed by the Collector, the predecessor-in-interest of the Respondent/cross-objector filed a composite application u/s 18 of the Act in respect of all the LA cases. The Collector initially referred some of the LA cases to the learned LA Judge who had fixed the market price of the acquired land under reference at Rs. 14,500 per Kani which was, on appeal, reduced to Rs. 8,000 per Kani by this Court vide its judgment and order passed in FA Nos. 23 and 24 of 1993. The SLP preferred against this judgment and order by the Appellant herein was rejected by the Apex Court. Pursuant to the order dated 6.3.2000 passed by this Court in WP(C) No. 45/2000, the Collector, thereafter, referred 7 (seven) LA cases to the learned LA Judge for adjudication, which were registered as Misc. (LA) cases. The number of Misc. (LA) cases concerned in these appeals and the area of land involved are as follows:

1. Misc. (LA) Case No. 8/2000 1.30 acres
2. Misc. (LA) Case No. 9/2000 2.57 acres
3. Misc. (LA) Case No. 10/2000 2.58 acres
4. Misc. (LA) Case No. 11/2000 2.58 acres
5. Misc. (LA) Case No. 12/2000 8.00 acres
6. Misc. (LA) Case No. 13/2000 3.45 acres
4. Misc. (LA) Case No. 14/2000 2.38 acres

11. The land involved in the aforesaid references made by the Collector pursuant to the order dated 6.3.2000 passed by this Court in WP(C) No. 45/2000 is thus 22.86 acres (compact area), out of the total acquired land of 80 acres. In the said Reference cases the Respondent/cross objector and the Collector have examined one witness each before the learned LA Judge. Sri Gopinath Bhowmick (PW1) who was examined by the Respondent/cross-objector in support of her claim for Rs. 12,500 per Kani, during his deposition, has proved the judgment and award dated 24.3.1993 passed by the learned LA Judge in the earlier two reference cases by exhibiting the same as Ext. 1, whereby and where-under the market value of the land acquired has been fixed at Rs. 14,500; as well as the judgment and order of this Court passed in FA Nos. 23 and 24 of 1993 arising out of the said reference cases wherein the market value of the land has been reduced to Rs. 8,000 per Kani, by exhibiting the same as Ext. 2. That apart 8 (eight) sale instances have been proved by exhibiting 8 sale deeds, in support of the claim. The date of execution of the sale deeds (8 in number, marked as Ext.3 to 10), the area and the price of the land, which were proved by this witness, are given below:

Sl.	Ext.	Date	Area of land	Class	Price in No.	Execution land
1.	3	22.8.1972	10 Gandas (0.20 acres)	Lunga land	1,500	
2.	4	22.8.1972	10 Gandas (0.20 acres)	Tilla land	1,500	
3.	5	16.11.1972	1 Kani 13 Gandas	Tilla land	5,000 (0.66 acres)	
4.	6	16.2.1970	1 Ganda 2 Kara 2 Kranta Viti land		1,000 (0.03 acres)	
5.	7	16.2.1970	1 Kani 10 Ganda 1 Kara Viti land		12,000 (0.60 acres)	
6.	8	17.2.1972	9 Ganda (0.18 acres)	Tilla land	8,000	
7.	9	5.1.1973	5 Ganda (0.10 acres)	Viti land	2,000	
8.	10	27.11.1972	7 Ganda 2 Kara (0.15 acres)	Viti land	4,500	

12. From the deposition of this witness it appears that the aforesaid land covered by the sale deeds, are in the proximity of the acquired land. The sale deeds are executed prior to the date of publication of the notification u/s 4(1) of the Act. It appears that the land in Ext. 3, 4 and 5 were sold @ Rs. 3,000 per Kani; Ext. 7 & 9 @ Rs. 8,000 per Kani; Ext. 6 @ Rs. 13,333 per Kani; Ext. 8 @ Rs. 17,777 per Kani and Ext. 10 @ Rs. 12,000 per Kani. The land in Ext. 3 is Lunga land; Ext. 4, 5 and 8 are tilla land; and Ext. 6, 7, 9 and 10 are viti land. Hence only the land in Exts. 4, 5 and 8 are of the same class as that of the acquired land, i.e., tilla land. The land in Ext. 3 is of inferior class and that in Exts. 6, 7, 9 and 10 are of superior class than that of the acquired land. Therefore, only the sale instances in Exts. 4, 5 and 8 can be taken into consideration, those being of comparable sale instances in the vicinity of the acquired land.

13. In the instant cases, PW1 has made a categorical statement in his deposition that the land involved in Ext. 3 to 10 are in the same Mouza and hardly 50 yards from the ONGC premises. It has also been deposed that the lands in the present Reference cases are nearer to the main road than the land in the earlier reference cases, which have been disposed of by this Court. Sri Probodh Roychoudhury, who was examined by the Collector has also deposed that the land involved in these proceedings are situated by the side of Agartala-Bisalgarh Road and the land involved in the earlier proceedings are about 1 to 1 1/2 furlong away from the said road. Hence, the lands in question are to some extent in advantageous position.

14. The market value envisages the price at which a willing purchaser may buy under bona fide transfer from a willing seller. The instances of sale of comparable land in the vicinity around the time of issuance of notification u/s 4(1) of the Act, can form the basis of determination of market value of the acquired land. However, in determining the market value on the basis of the comparable sale instances, the court is also required to keep in mind the area of land involved in

such sale instances vis-a-vis the area of land acquired. The transaction in regard to smaller property therefore, cannot be taken as a real basis for fixation of compensation in respect of larger tracts of property without making appropriate deduction depending on facts of each case.

15. The Apex Court in *Viluben Jhalejar Contractor* (supra) placing reliance on its earlier decisions including in *Administrator General of W.B.* (supra) has observed that the market value is ordinarily the price the property may fetch in the open market if, sold by willing seller unaffected by the special needs by a particular purchaser and when definite material is not forthcoming either in the shape of sales of similar land in the neighborhood at or about the date of notification u/s 4(1) of the Act or otherwise, other sales instances as well as other evidence are to be taken into consideration for the purpose of determining the market value. The Apex Court has further observed that the amount of compensation cannot be ascertained with mathematical accuracy and comparable instance has to be identified having regards to the proximity from the time angle as well as proximity from the situation angle and for determining the market value of the land under acquisition, suitable adjustment has to be made having regard to the various positive and negative factors vis-a-vis the land under acquisition by placing the two juxtaposition. The positive factors as noticed by the apex court are, smallness of size, proximity to a road, frontage of a road, nearness to the developed area, regular shape, level vis-a-vis the land under acquisition and special value for an owner of an adjoining property to whom it may have some very special advantage and the negative factor have been noticed as largeness of area, situation in the interior at a distance from the road, narrow strip of land with very small frontage compared to depth, lower level requiring the depressed portion to be filled up, remoteness from developed locality and some special disadvantageous factors which would deter a purchaser. It has further been observed that where a small plot may be within the reach of many, a large plot of land will have to be developed preparing a lay out plan, curbing out roads, leaving open spaces, plotting out smaller plots, waiting for purchaser and hazards of an entrepreneur and such development charge may range between 20% and 50% of the total price. In *Chimanlal* (supra) and *P. Ram Reddy* (supra), the Apex Court also took the same view. Placing reliance on *Viluben Jhalejar Contractor* (supra) the Apex Court in *ONGC Ltd.* (supra) has reiterated the same principle for determination of the market value of the acquired land u/s 23 of the Act by observing that the best method for determining the market value would be the amount as may be evidenced by the deeds of sale and in the absence of any direct evidence the court may take recourse to other methods, namely judgment and award passed in respect of acquisition of land made in the same village and/or in the neighbouring villages but such judgment and award in the absence of any other evidence like deed of sale, report of expert and other relevant evidence would have only evidentiary value. In *Karan Singh* (supra), the Apex Court has observed the conditions to be satisfied before taking into consideration the post notification sale transactions, which decision, however, is

not applicable in the cases in hand as all the sale transactions proved are prior to the notification u/s 4(1) of the Act.

16. In the instant cases as discussed above, by Ext. 4 and 5 sale deeds, land were sold @ Rs. 3,000 per Kani on 22.8.1972 and 16.11.1972, i.e., within six months preceding the date of issuance of the notification u/s 4(1) of the Act. By Ext. 8 sale deed, the land was sold on 17.2.1972 @ Rs. 17,777 per Kani almost one year before such notification u/s 4(1) issued, but the land sold by Ext. 8 even was less in area than the land sold by Ext. 4 and 5. The instances of sale transaction of comparable class in the vicinity of the acquired land (Ext. 4, 5 and 8) being relating to very small portion of land in comparison to the land acquired by issuing notification u/s 4(1) of the Act, as held by the Apex Court some deductions have to be made from the prices fetched by such sale deeds in determining the market value of the acquired land, more so when there is absolutely no evidence on record that the acquired land is a fully developed land having all facilities like internal roads, provision for electricity drainage, etc. However, it also cannot be lost sight of that the land involved in the present proceedings are by the side of the Agartala-Bisalgarh Road and the part of the acquired land involved in the earlier proceedings is 1 to 1 1/2 furlong away from the said road.

17. The market value of the acquired land in the present proceedings cannot solely be determined on the basis of the sale transaction, i.e., Ext. 8 which fetched the price of Rs. 17,777 per Kani, as the other sale transactions of comparable land being Exts. 4 and 5 fetched Rs. 3,000 per Kani. All these sale transactions are within a period of one year preceding the date of issuance of notification u/s 4(1) of the Act. While considering Ext.8 sale transaction, for the purpose of determining the market value of the acquired land, in the absence of any evidence relating to the development of the acquired land as discussed above, there has to be deduction from the price fetched by such sale transactions, keeping in view small portion of land sold by Ext. 8, i.e., only 9 Ganda (0.18 acres) vis-a-vis the vastness of the acquired land involved in the present proceedings, i.e., 22.86 acres, of at least 50%, which would come to Rs. 8,888 per Kani.

18. Admittedly, this Court vide judgment and order dated 7.1.2000 passed in FA Nos. 23 and 24 of 1693 has determined the market value of the acquired land involved in the said proceedings, which is part of 80 acres of land acquired by issuing the notification u/s 4(1) of the Act, @ Rs. 8,000 per Kani. The said judgment and award passed by this Court is no doubt relevant for the purpose of determining the market value of the present land in question, which is also part of 80 acres of land acquired by issuing the same notification u/s 4(1) of the Act. The Apex Court in *Pal Singh (supra)*, *Bhag Singh (supra)*, *Printers House (P.) Ltd. (supra)*, *Kasturi and Ors. (supra)* and *V. Hanumantha Reddy (supra)* has also observed that the award passed by the court in determining the market value of the land acquired in the vicinity can also be taken into consideration.

19. The learned LA Judge has determined the market value of the acquired land, in the present cases, at Rs. 8,500 per Kani by taking the average price fetched by the sale transactions (Ext. 3 to 10), which though may not be the correct procedure to be adopted while determining the market value of the land, however, such market value as determined cannot be treated as unreasonable, keeping in view the situation of the acquired land as well as its vastness as well as the Ext. 8 sale instance and the judgment and order dated 7.1.2000 passed in FA Nos. 23 and 24 of 1993. Hence, I am of the view that the learned LA Judge has rightly fixed the market value of the acquired land at Rs. 8,500.

20. The next question which requires determination by this Court is whether the Respondent/cross-objector is entitled to the amount calculated @ 12% per annum on the market value u/s 23(1A) of the Act. Section 23(1A) was introduced in the Act by Amending Act 68 of 1984 which came into effect from 24.9.1984. By Section 30(1) of the Amending Act, the application of Section 23(1A) has been extended to proceedings pending on or after 30.4.1982. A Constitution Bench of the Apex Court in K.S. Paripoornan Vs. State of Kerala and Others, has held that there is no scope for extending the ambit of retrospective operation u/s 23(1A) beyond the limits specified in Section 30(1) of the Amending Act so as to apply to all proceedings initiated prior to the date of coming into force of the Amending Act which were pending before the civil court on reference u/s 18 of the principal Act irrespective of the date on which the award was made by the Collector.

21. In the instant cases, the award was made by the Collector admittedly prior to 30.4.1982. Hence, no amount u/s 23(1A) can be awarded in respect of the present Reference proceedings as has been done by the learned LA Judge. Therefore, the award passed by the learned LA Judge in respect of the present proceedings u/s 23(1A) of the Act is set aside, without, however, interfering with the market value determined by the learned LA Judge @ Rs. 8,500 per Kani as well as the solatium and interest as awarded.

22. In the result, the appeals are partly allowed to the extent indicated above. The cross objections stand dismissed. No costs.